

REMARKS

Reconsideration is respectfully requested.

CLAIM REJECTIONS - 35 U.S.C. §102

The Examiner has rejected Claims 1, 2, 6-8, 9-11, 12, 14-18, and 20 under 35 U.S.C. § 102(b) as allegedly being anticipated by Kesler (US 4,470,373).

Applicant has amended Claim 1 and Claim 7 to further distinguish Applicant's invention from Kesler. The Kesler device is not structured and arranged for use by a dallyer sitting on a saddle using at least one dally rope positioned in front of the dallyer wherein said at least one dally rope is structured and arranged to permit dallying around the at least one saddle horn by the dallyer sitting on the saddle. Those of ordinary skill in the art can appreciate that the Kesler device cannot function for practicing dallying because the rope (and source of tension) is positioned behind the user. One of the conditions required for a dally rope structured and arranged to permit dallying is that the dally rope comes from a direction in front of the dallyer as shown in Applicant's FIG. 1A, FIG. 1B, and FIG. 1C. The Kesler device is NOT structured and arranged to permit dallying.

Further, Applicant has amended Claim 1 to add a casing means for the tension means and an attachment means for attaching the dally training system to a substantially fixed object. Applicant's specification supports such amendments. The casing means is disclosed in Applicant's Specification, page 15, line 8. Claim 1, as amended, clearly does not claim the structure of Kesler. It is therefore respectfully submitted that rejection of Claims 1 and 7 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 2 and Claim 8: Applicant has amended Claim 2 to include Applicant's preferred attachment swivel means. The swivel means and the attachment means for the swivel means is disclosed in Applicant's Specification, page 17, lines 8-12. The swivel allows the tension means to move left and right, up and down, and in a circle (this structure is absent from the Kessler disclosure). With the swivel means, the dallyer can realistically simulate the technique needed to dally rope 104 when rope 104 is attached to a live animal. Kesler clearly does not comprise a swivel means at an attachment means as per Applicant's limitation. It is

therefore respectfully submitted that rejection of Claims 2 and 8 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 14: Applicant has amended Claim 14. As previously argued, Kesler does not teach "wherein said at least one dally rope is structured and arranged to permit dallying around the at least one saddle horn" Further, Kesler does not teach "at least one attacher structured and arranged to attach said at least one reel to the fixed object; wherein said at least one attacher comprises at least one swivel." It is therefore respectfully submitted that rejection of Claims 14 (and all Claims dependent therefrom) should be withdrawn.

The Examiner has rejected Claims 14-16 under 35 U.S.C. §102, as allegedly being anticipated by Rudolph (US 2,821,960).

Applicant has amended Claim 14: Rudolph does not teach "at least one attacher structured and arranged to attach said at least one reel to the fixed object; wherein said at least one attacher comprises at least one swivel." It is therefore respectfully submitted that rejection of Claims 14 (and all Claims dependent therefrom) should be withdrawn.

Applicant believes that all Claims, as amended, are now allowable with respect to 35 U.S.C. §102 and respectfully request that all such rejections be withdrawn.

CLAIM REJECTIONS - 35 U.S.C. §103

The Examiner has rejected Claims 3-5 under 35 U.S.C. § 103 as allegedly being unpatentable over Kesler ('373) in view of Fontaine (US 2,776,644).

Applicant repeats as though fully set forth here the above arguments regarding Kesler.

With respect to the Examiner's assertion that Kesler and Fontaine are not non-analogous art, the Examiner's arguments are not persuasive. Applying *In re Oetiker*, to the facts in the present case, neither Kesler nor Fontaine are in the field of applicant's endeavor, nor are they reasonably pertinent to the particular problem with which the Applicant is concerned. 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992). Applicant's endeavor is the safe practice of dallying without the use of live animals. As has been stated above, and incorporated herein, neither Kesler nor Fontaine are related to dally practicing. The Kesler device is not a dally practicing device, and Fontaine describes a hand held leash. Because neither Kesler nor Fontaine deal with

dally practicing, neither can be combined for obviousness purposes. Further, Applicant's device is designed for use without live animals. Kessler and Fontaine are designed to control live animals (a completely different problem), whereas Applicant's device is designed to assist in training people. Neither Kesler nor Fontaine are reasonably pertinent to the particular problem with which the applicant was concerned, namely, dally practicing. Kesler does not seek to solve the problem of how to practice dallying without using a live animal. Regarding Fontaine, The elements of Fontaine that the Examiner suggests are a securement means (elements 12, 13, 14, 15, and 16) comprise a wrist strap for a hand held leash. Reading Fontaine, col.1, lines 26-27, the secure and convenient support for the device is the user's hand. The practice of dallying is a completely different problem than keeping a leash in a user's hand by way of a wrist strap. It is unreasonable that one of ordinary skill in the art would look to Fontaine or Kesler to solve a problem related to dally practice with out the use of live animals to train humans. Holding a device in one's hand (Fontaine) to keep an animal tethered is a completely different problem than that which Applicant is concerned.

The alleged motivation that the Examiner has provided to combine Kesler and Fontaine is not persuasive. The Fontaine device is designed to be held in a user's hand securely and conveniently. The fact that a wrist strap can be disconnected in Fontaine and can be gripped tightly and comfortably (col. 2, lines 9-13) does not motivate one to find a solution to the problem of practicing dallying without a live animal to train humans.

It is well settled that to support an obviousness rejection, the prior art must contain some teaching or suggestion to make the modifications suggested by the Examiner. In this regard, the Federal Circuit has stated that "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." (emphasis added) In re Fritch, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992). Applicant respectfully submits that no such suggestion exists in Kesler or Fontaine to so modify or combine the elements to result in the Applicant's claimed invention. Furthermore, Applicant respectfully submits again that neither the Kesler nor the Fontaine references teach nor suggest Applicant's claimed invention.

Applicant respectfully submits that the Federal Circuit has stated: "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings

of the prior art so that the claimed invention is rendered obvious. This court has previously stated that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992).

It is therefore respectfully submitted that rejection of Claims 3-5 (and all Claims dependent therefrom) should be withdrawn. If the Examiner persists with these rejections, Applicant requests evidence of motivation or suggestion to combine the references as suggested by the Examiner. But, even if such motivation were found such combination would still not result in Applicant’s invention as claimed. For Example: the end of the Fontaine device is not a dallying rope and is NOT suitable for dallying.

The Examiner has rejected Claim 13 under 35 U.S.C. § 103 as allegedly being unpatentable over Rhoades (US 4,353,546) alone. The Examiner erroneously states that Applicant’s specification states that “the combination of the line and rope may be substituted for with just the rope” (sic) (Detailed Action page 4, lines 16-20). Applicant does not state that the combination of the line and the rope may be substituted with just the rope. Applicant’s specification states that under appropriate circumstances the line may “be made of rope” and does not erase the need for a line. Further, Applicant has amended Claim 13 to include “at least one reel structured and arranged to apply at least one tension force...” Rhoades does not teach such arrangement. It is therefore respectfully submitted that rejection of Claim 13 (and all Claims dependent therefrom) should be withdrawn.

The Examiner has rejected Claim 21 under 35 U.S.C. § 103, as allegedly being unpatentable over Kesler (US ‘373) in view of Marshall (US 3,123,052).

With respect to the Examiner’s assertion that Kesler and Marshall are not non-analogous art, the Examiner’s arguments are unpersuasive. Applying *In re Octiker*, to the facts in the present case, neither Kesler nor Marshall are in the field of applicant’s endeavor, nor are they reasonably pertinent to the particular problem with which the Applicant is concerned. Applicant’s endeavor is the safe practice of dallying without the use of live animals to train humans. As has been stated above, and incorporated herein, neither Kesler nor Marshall are related to dally practicing. The Kesler device is not a dally practicing device, and Marshall describes a dog leash for restraining a dog. Because neither Kesler nor Marshall deal with dally

practicing, neither can be combined for obviousness purposes. Further, Applicant's device is designed for use without live animals. The Kessler and Marshall references are designed to control animals, whereas Applicant's device is designed to assist in training people. Neither the Kesler nor the Marshall reference are reasonably pertinent to the particular problem with which the applicant was concerned. Kesler does not seek to solve the problem of how to practice dallying without using a live animal. The problem that Marshall is trying to solve is a way to secure a dog to a leash so the dog can move freely within a certain area while remaining leashed. The practice of dallying is a completely different problem than keeping a dog leashed while such dog can move freely around the leash. It is unreasonable that one of ordinary skill in the art would look to Marshall or Kesler to solve a problem in dallying art.

The alleged motivation that the Examiner has provided to combine Kesler and Marshall is unpersuasive. Applicant's invention is not designed to set a desired tension "in accordance with different strengths of animals or the like to which the leash is attached." Marshall, col. 1, lines 30-32. Applicant's invention is not attached to an animal.

Applicant respectfully submits that the Federal Circuit has stated: "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992).

The Examiner has rejected Claims 22-23 under 35 U.S.C. §103 as allegedly being unpatentable over Kesler (US'373) in view of Bacque (US 6,000,989).

With respect to the Examiner's assertion that Kesler and Bacque are not non-analogous art, the Examiner's arguments are not persuasive. Applying *In re Oetiker*, neither Kesler nor Bacque are in the field of applicant's endeavor (the safe practice of dallying without the use of live animals to train a human), nor are they reasonably pertinent to the particular problem with which the Applicant is concerned. Neither Kesler nor Bacque are related to dally practicing. The Kesler device is not a dally practicing device, and Bacque is a toy for use by young children. Because neither Kesler nor Bacque deal with dally practicing, neither can be combined for obviousness purposes. Neither the Kesler nor the Bacque reference are reasonably pertinent to

the particular problem with which the applicant was concerned. Neither Kesler nor Bacque attempt to solve the problem of training a human to dally without using a live animal. It is unreasonable that one of ordinary skill in the art would look to Kesler or Bacque to solve a problem in dallying.

The alleged motivation that the Examiner has provided to combine Kesler and Bacque 1 is not persuasive. The safety release of the Bacque reference functions in an entirely different manner than Applicant's invention. The Bacque device has a noose which is broken by the safety release. Applicant's device does not comprise a safety release for a noose.

Applicant respectfully submits that the Federal Circuit has stated: "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992).

It is respectfully submitted that rejection of Claims 22-23 (and all Claims dependent therefrom) should be withdrawn.

The Examiner has rejected Claims 22, 24-26 and 32-33 under 35 U.S.C. §103, as allegedly being unpatentable over Kesler ('373) in view of Knox (US 2,563,533).

Applicant has amended Claim 26 to include Applicant's preferred eccentric protrusion.

Further, The alleged motivation that the Examiner has provided to combine Kesler and Knox is unpersuasive. Knox is a toy lasso. See Knox FIGS. 1-2A. The field of applicant's endeavor is dally practicing without the use of live animals to train humans, not toys. Dallying can potentially injure a dallyer if the dally rope wraps around the fingers of the dallyer when a calf is pulling on the dally rope. One trying to solve the problem of dallying would not look to toy art (Knox) for motivation.

Applicant respectfully submits that the Federal Circuit has stated: "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated

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disclosures in the prior art to deprecate the claimed invention." In re Fritch, 972 F.2d 1260, 23 U.S.P.Q. 2d 1780, 1783-84 (Fed. Cir. 1992).

The Examiner has rejected Claim 19 under 35 U.S.C. § 103 as allegedly being unpatentable over Kesler ('373) in view of Croce et al. (US 3,853,283).

Applying In re Oetiker, neither Kesler nor Croce are in the field of applicant's endeavor (the safe practice of dallying without the use of live animals to train a human), nor are they reasonably pertinent to the particular problem with which the Applicant is concerned. Neither Kesler nor Croce are related to dally practicing. The Kesler device is not a dally practicing device, and Croce is a leash for animals. Because neither Kesler nor Croce deal with dally practicing, neither can be combined for obviousness purposes. Neither Kesler nor Croce reference are reasonably pertinent to the particular problem with which the applicant was concerned. Neither Kesler nor Croce attempt to solve the problem of training a human to dally without using a live animal. It is unreasonable that one of ordinary skill in the art would look to Kesler or Croce to solve a problem in dallying.

The Examiner has rejected Claim 27-29 under 35 U.S.C. §103 as allegedly being unpatentable over Kesler ('373) and Knox ('533) in view of Croce et al. ('283).

Both Croce and Knox are non-analogous art. Applicant's device does not involve live animals, as does the Croce device. The Croce device is designed to control animals, whereas Applicant's device is designed to assist in training people. The Knox device is a toy which is unrelated to dallying. Since the Kessler, Knox, and Croce references are not in the field of the applicant's endeavor or reasonably pertinent to the problem the Applicant is attempting to solve (teaching a human to dally with a practice device that does not require live animals), obvious rejections based on these references are improper. It is therefore respectfully submitted that rejection of Claim 27-29 (and all Claims dependent therefrom) should be withdrawn.

Further, regarding the Croce device, the Croce device does NOT teach Applicant's claim limitations as suggested by the Examiner. The "teeth" taught by the Croce device do NOT teach applicant's claim limitation "wherein said at least one reel comprises at least one eccentric portion adapted to provide irregular retraction of said at least one line." The Examiner's statement on page 7, lines 5-6 of the office action that "it is considered that the lock settings encompasses

"irregular retraction"" is clearly NOT how "irregular retraction" is defined, described and taught in Applicant's specification- see page 15, lines 8-22, of Applicant's specification:

"Preferably, reel 114 comprises an asymmetric protrusion 115 (such as, for example, as shown in FIG. 7 and FIG. 8) so that reel 114 is eccentric and the speed with which slack is taken up and/or the tension in line 112 varies as the line is coiled around reel 114, thereby assisting in the simulation of an animal on the end of a rope (embodying herein wherein said reel means comprises eccentric means for providing irregular retraction of said line means for improved simulation of the movement of an animal; and embodying herein wherein said eccentric means comprises at least one protrusion; and embodying herein wherein said eccentric means comprises exactly one protrusion; and embodying herein wherein said at least one reel comprises at least one eccentric portion adapted to provide irregular retraction of said at least one retractable line)."

The Croce device does not have an asymmetric protrusion as does Applicant's invention. See Applicant's drawings, element 115, FIG. 7. The irregular retraction in Applicant's invention is "an asymmetric protrusion 115 (such as, for example, as shown in FIG. 7 and FIG. 8) so that reel 114 is eccentric and the speed with which slack is taken up and/or the tension in line 112 varies as the line is coiled around reel."

It is therefore respectfully submitted that rejection of Claim 27-29 (and all Claims dependent therefrom) should be withdrawn.

The Examiner has rejected Claims 30-31 under 35 U.S.C. §103 as allegedly being unpatentable over Kesler ('373), Knox ('533), and Croce et al. ('283) in view of Fontaine ('644).

As has been previously stated, and incorporated herein, neither Kesler, Knox, Croce, nor Fontaine are in the field of applicant's endeavor (the safe practice of dallying without the use of live animals to train a human), nor are they reasonably pertinent to the particular problem with which the Applicant is concerned. Applicant also points out that the Examiner has combined four references to reject Claims 30-31. Applicant respectfully submits that the Federal Circuit has stated: "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. The court has previously stated that "[o]ne cannot use hindsight

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reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." In re Fritch, 972 F.2d 1260, 23 U.S.P.Q. 2d 1780, 1783-84 (Fed. Cir. 1992).

Applicant respectfully submits that when the Examiner is relying solely on his own judgment that some combination of references is obvious rather than relying on some documented evidence or publication to prove motivation, it is incumbent upon the Examiner to use discretion in making obviousness rejections. According to MPEP 706, "The examiner should never overlook the importance of his or her role in allowing claims which properly define the invention."

For the reasons given above, and after careful review of all the cited references, Applicant respectfully submits that none of the cited references nor any combination of the cited references will result in Applicant's claimed invention in the present Claims, as amended. But even if any such combination might arguably result in such claimed invention, it is submitted that such combination would be non-obvious and patentable.

A petition and fee for extension of time under 37 C.F.R. § 1.136(a) have been submitted under separate cover. If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 50-1887.

Applicant respectfully requests that the Examiner, after having an opportunity to review this Office Action Response, grant a telephonic interview to Applicant's undersigned agent in order to discuss Applicant's response to the Examiner's first Office Action (before the Examiner prepares a second office action), to attempt to reach mutual understanding and clarify any outstanding issues. Applicant respectfully requests that the Examiner call Applicant's undersigned agent at 602-263-9200 to schedule a telephonic interview at least two business days in advance to allow the Applicant's undersigned agent time to prepare and schedule the interview. For telephonic scheduling purposes, Applicant's agent is located in Arizona, in the Mountain Standard Time zone.

Date: March 20, 2006

Respectfully submitted,



Benjamin K. Erlick (51,656)

3113 North 3rd Street

Phoenix, AZ 85012

(602) 263-9200

Agent For Applicant